

REMARKS

Reconsideration of the subject patent application is respectfully requested.

At the present time, claims 22-28 and 31-40 are pending and all claims have been rejected by the Examiner. More specifically, claims 22-24, 27, 28, 32, 35, 37, 39, and 40 are rejected under 35 U.S.C. §102(b) as being anticipated by Pampuch. Claims 25, 26, 31, 33, and 34 are rejected under 35 U.S.C. §103(a) as being unpatentable over Pampuch. Claims 36 and 38 are rejected under 35 U.S.C. §103(a) as being unpatentable over Pampuch in view of Wood.

Applicant has carefully considered the Pampuch reference and the pending claims. While there are aspects of Pampuch which are arguably relevant to limited portions of the claimed invention, Pampuch fails as an anticipatory reference and the deficiencies are not satisfied by the Wood reference. The clear and significant shortcomings of Pampuch are not supplemented by any other references nor by what the Examiner assumes would be obvious or determinable through routine experimentation.

Claim 22 recites a "plurality of peripheral sealing elements" which are "comprised of elastofibers". In the rejection of this claim, the Examiner provides a detailed analysis of the Pampuch disclosed structure citing only to Column 2, lines 12-16 of the Pampuch specification for these structural features of claim 22. In order to be clear, there are no further details regarding this brief paragraph of the Pampuch specification and there are no corresponding or assisting drawings to help with an understanding of what these few lines might mean. The Examiner cites to nothing else in

Pampuch nor does she cite to any other reference regarding the recited “plurality of peripheral sealing elements” which are “comprised of elastofibers”.

The cited portion of Pampuch is set forth below for emphasis and to show its sparse and incomplete nature in terms of offering any teaching of a “plurality of peripheral sealing elements” which are “comprised of elastofibers”:

an additional form of construction made in accordance with
this invention is one in which the inside surface of the
elastic band is also provided with surrounding laterally
spaced ribs.

This cited passage qualifies, by its own language, that the “additional form of construction” is made in accordance with this invention. This “invention” is defined, at least in part, by the text of Column 1, lines 29-36, of the Pampuch specification. The “invention” involves two structural requirements. One structural requirement is to hold together the two different parts. This is a mechanical characteristic achieved by the mechanical interfit of the two portions. A stated objective of this mechanical interfit is to secure the connection against accidental release. The other requirement is to provide a gas-tight joint or connection.

We now have to try and guess as to what function is performed, if any, by the “laterally spaced ribs” as found in the quoted paragraph of Pampuch. That quoted passage refers to the inside surface of the elastic band is “also” provided with ribs and it seems clear that both of the members to be joined together include laterally spaced ribs.

While speculation and guessing are always risky, are these “laterally spaced ribs” used for a rib-to-rib mechanical interfit between the two members? Importantly, this text which describes the providing of “laterally spaced ribs” does not also describe that any of the other ribs 2 and 2a and 3 are eliminated. How then are these newly added ribs supposed to cooperate or interfit with the current ribs? As the Examiner knows, nothing is disclosed or illustrated which would assist in answering this question. In Applicant’s opinion, the most likely answer is that there is a mechanical rib-to-rib interfit in order to hold together the two different members and to secure the connection against accidental release. If true, these additional ribs are not being used as a part of creating a gas-tight joint or connection. As further discussed later in this Response, this type of key/lock mechanism requires fairly precise sizing, spacing and positioning in order to achieve the rib-to-rib interfit. These are added requirements and added complications limited to Pampuch which Applicant’s claimed invention does not have to address.

The Examiner may wish to challenge Applicant’s best guess as to what these additional ribs are used for since some element of speculation has to be involved due to the sparse and minimal disclosure provided. But, isn’t that the point? There isn’t enough information in Column 2, lines 12-15, for anyone, including the Examiner, to know what is being described in terms of the “laterally spaced ribs”. This portion of the Pampuch specification is not sufficient as a basis to reject claim 22, given that this is the entirety of the Examiner’s position relative to the recitation of a “plurality of peripheral sealing elements” which are “comprised of elastofibers”.

Looking at the structural elements of claim 22 individually, this claim recites a “plurality of peripheral sealing elements”. Nothing in the cited passage of Pampuch

makes any reference or suggestion, and certainly no teaching, that the “laterally spaced ribs” are “sealing elements”. There is no function described in the quoted paragraph of Pampuch and the term, “sealing”, is never used in that paragraph, nor is any similar term or synonym for “sealing” used in that paragraph. Further, nothing in the cited paragraph of Pampuch makes any reference or suggestion, and certainly no teaching, to the fact that the “sealing elements” are comprised of “elastofibers”. Elastofibers, as used according to the present invention, exhibit specific properties as delineated in the paragraph bridging pages 8 and 9 of the specification. This portion of the specification explicitly states that elastofibers are manufactured fibers which are extremely extensible and, after the tensile force has been removed, substantially return into the original state. Obviously there is nothing in any portion of Pampuch and absolutely nothing at all in the quoted paragraph which could provide a basis for the disclosure of “elastofibers”.

The deficiencies and shortcomings of Pampuch are clear and substantial. As a result, as explained herein, there is no basis for the rejection of claim 22 as being anticipated by Pampuch. Therefore, the Examiner is respectfully requested to withdraw the rejection of claim 22 and to withdraw the rejection of all claims depending from claim 22.

The Pampuch reference is structurally deficient as a basis to reject claim 22 as explained above. In terms of the overall teaching and inventive focus, the Pampuch reference is deficient as well. In this context, “deficient” is meant to cover the fact that there is a fundamental difference in intent and objective between Pampuch and the claimed invention. The factual reality that the teachings of Pampuch go in a different

direction from the claimed invention influences what a person of ordinary skill in the art might contemplate or be directed to do.

Pampuch refers to a connection between two parts of a flexible protective covering for a person, with one of the parts having an opening therein facing the other part. This connection comprises an elastic band having one edge secured to the one part around the opening. The band extends away from the one part and surrounds a portion of the other part. The free end of the band is thickened relative to the adjoining portion thereof and provided with a continuous groove in its inner surface extending around the thickened portion. The outer surface of the portion of the other part surrounded by the band is provided with surrounding laterally spaced ribs including one rib projecting into the groove for mechanically holding the two parts of the protective covering together.

According to Pampuch, each of the parts to be connected requires cooperating elements which are structurally configured so as to provide a mechanical detent. These elements include a groove on the one hand and a rib on the other hand. Consequently, Pampuch, in contrast to the present invention, focuses on an interfit principle, best described as a key/lock mechanism. That means that the two parts to be mechanically connected have to be precisely sized, shaped, and positioned in order to enable the "key" (i.e., rib) to be engaged into the "lock" (i.e., groove). This concept, however, exhibits the decisive disadvantage that in order to have any hope for the desired connection between the two parts, a precise mechanical interfit is required.

It is Applicant's position that, on the whole, Pampuch has very little in common with respect to the claimed invention and nothing in common which can provide the basis for any claim rejection. Pampuch neither discloses nor renders obvious the claimed

invention. Further, Pampuch teaches away from the present invention since it refers only to a particular mechanical interfit principle referred to above as a key/lock mechanism. Therefore, a person of ordinary skill in the art would not consider this reference as offering any relevant teaching with respect to the claimed invention.

Applicant recognizes that each prosecution must rise or fall on its own merit based upon the applicable standards of review for the corresponding Patent Office and based upon the judgment of the Examiner. However, there always seem to be situations where the prosecution issues have one or more subjective components. In these situations, it might be helpful to pause, take a step back, and rethink the prosecution issue. The subject application is a national stage filing of PCT/EP2004/004932. In the January 9, 2004 Search Report, the Pampuch reference was listed as a Category A (general state of the art) document. The Pampuch reference was not found to be pertinent in this parallel PCT prosecution. While Applicant acknowledges that the Examiner is not "bound" by this result, the result is instructive in terms of subjective issues and individual or personal judgment. A counterpart Canadian Patent (No. 2,524,465) has also issued with its Claim 1 being somewhat broader than Claim 22 of the subject application. The Pampuch reference was of-record in the Canadian prosecution and not a bar to the issuance of this (broader) Claim 1.

Although the Examiner has cited Wood in combination with Pampuch for the §103(a) rejection of claims 36 and 38, these two claims depend, either directly or indirectly, from claim 22 and are allowable on that basis.

Claim 39 recites an article of clothing and the structural details recited for the clothing body are essentially the same as what is recited in claim 22. The remarks

regarding the Pampuch reference in the context of claim 22 are considered fully applicable to what is recited in claim 39 and the rejection of claim 39 by the Examiner.

Claim 40 recites a method of closing out the transition between two items by using an elastic hem. The structural details which are recited include a plurality of sealing elements in the form of elastofibers. The remarks regarding the Pampuch reference in the context of claim 22 are considered fully applicable to claim 40 and the rejection of claim 40 by the Examiner.

Based upon the explanations and arguments offered regarding the differences and deficiencies of the Pampuch reference, claims 22-28 and 31-40 are in condition for allowance and the Examiner is respectfully requested to withdraw all claim rejections.

Respectfully submitted,

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